IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Bail Appl..No. 4146 of 2007()

CRIME 101/07 OF ANGAMALY POLICE STATION

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PETITIONER/1ST ACCUSED

N.K.KOYA, AGED 58,
S/O KHADER, KOYAS MANZIL,
ERAYAMKUDI, MAMBRA,
PARAKKADAVU VILLAGE, ALUVA TALUK.

BY ADV. SRI.C.D.JOHNY
SRI.P.SHAIJAN JOSEPH

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE,
ANGAMALY POLICE STATION, ANGAMALY REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/07/2007, A/W. BA 4148 OF 2007 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 4146, 4148, 4153, 4154, 4155,
4156, 4157, 4158 4162 of 2007

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Dated this the 10th day of July, 2007

O R D E R

These applications by common petitioner are all for anticipatory bail. Nine crimes have been registered altogether. Four of them, on the basis of the complaint, referred by the learned Magistrate under Section 156(3) Cr.P.C. Identical allegations are raised in all these matters under Section 420 I.P.C. The crux of the allegations is that gullible job seekers were fraudulently induced to part with huge amounts on the unintended promise to provide them job abroad. Amounts were collected. They were given VISAs also. But the VISAs given were not the type which were expected and promised. The victims had to suffer the ordeal of being treated like slaves in the country to which they were sent. They some how found their way back to India and lodged the complaints.

2. In addition to the petitioner, his wife, who is the licensee, is also made an accused. The lady has been granted anticipatory bail by the learned Sessions Judge. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His wife is the

licensee. His sons are also responsible for running the recruitment agency. The petitioner has no role or culpable part to play in the alleged offence of cheating. The petitioner is willing to abide by any reasonable conditions. He shall give necessary bank guarantee or cash security to ensure his presence and to satisfy the court. In these circumstances directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, it is prayed.

3. The learned Prosecutor opposes the application. He submits that there are satisfactory indications to suggest and infer that the petitioner was responsible for the commission of the culpable offence against the gullible job seekers. The fact that the petitioner's wife, who is shown in the records as the licensee, was granted anticipatory bail may not in any way weigh with the court while considering the application for bail of the petitioner, submits the learned Prosecutor. The petitioner is guilty of the commission of an offence of moral depravity. There is absolutely no justification in the prayer to invoke the discretion under Section 438 Cr.P.C. submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I must alertly be conscious of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. It is an extra ordinary equitable discretion that is

vested in this Court under Section 438 Cr.P.C. Such jurisdiction is not to be invoked as a matter of course. Compelling and satisfactory reasons must be shown to exist to justify such invocation. Such powers can be invoked only in aid of justice. When the conscience of the Court is satisfied that power of arrest which the State and its officials have under law are about to be invoked with vexatious, non-genuine and malafide motives, certainly such power can be invoked. Such power can also be invoked in an appropriate case where the invocation of the powers of arrest though not malafide would still result in great prejudice and hardship of an exceptional variety against the arrestees. I am not persuaded that any such circumstances do exist in the facts and circumstances of this case. This, I am satisfied, is an eminently fit case where petitioner must appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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